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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

JACOB MILLNER,

Plaintiff,

— vs —

CAPITAL ONE BANK (USA) N.A.,

Defendant,

\_\_\_\_\_ /

**PLAINTIFF’S COMPLAINT  
AND DEMAND FOR JURY  
TRIAL**

**COMPLAINT**

NOW COMES Plaintiff, JACOB MILLNER (“Plaintiff”), through his attorneys, and hereby alleges the following against Defendant, CAPITAL ONE BANK (USA) N.A. (“Defendant”):

**INTRODUCTION**

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.
2. Venue is proper in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part of the events or omissions giving rise to the herein claims occurred, or a substantial part of property that is the subject of the action is situated within this District

**PARTIES**

3. Plaintiff is a natural person residing in Wayne County, in the city of Southgate, Michigan.
4. Defendant is a Virginia corporation doing business in the State of Michigan.
5. At all times relevant to this Complaint, Defendant has acted through its agents employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

**FACTUAL ALLEGATIONS**

6. Defendant is a “person” as defined by 47 U.S.C. § 153 (10).

1 7. Defendant placed collection calls to Plaintiff seeking and attempting to  
2 collect on alleged debts incurred through purchases made on credit issued by  
3 Defendant.

4 8. Defendant placed collection calls to Plaintiff's cellular telephone at phone  
5 number (313) 574-17XX.  
6

7 9. Defendant placed collection calls to Plaintiff from phone numbers including,  
8 but not limited to (800) 955-6600, and (800) 365-2024.  
9

10 10. Per its prior business practices, Defendant's calls were placed with an  
11 automated telephone dialing system ("auto-dialer").

12 11. Defendant used an "automatic telephone dialing system", as defined by 47  
13 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect  
14 a consumer debt allegedly owed by Plaintiff, JACOB MILLNER.  
15

16 12. Defendant's calls constituted calls that were not for emergency purposes as  
17 defined by 47 U.S.C. § 227(b)(1)(A).  
18

19 13. Defendant's calls were placed to a telephone number assigned to a cellular  
20 telephone service for which Plaintiff incurs a charge for incoming calls  
21 pursuant to 47 U.S.C. § 227(b)(1).  
22

23 14. Defendant never received Plaintiff's "prior express consent" to receive calls  
24 using an automatic telephone dialing system or an artificial or prerecorded  
25 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

1 15. On or about June 9, 2017, the Plaintiff called into Defendant's company at  
2 phone number (800) 955-6600 and spoke with Defendant's male  
3 representative and requested that Defendant cease calling Plaintiff's cellular  
4 phone.

5  
6 16. During the conversation, Plaintiff gave Defendant his social security number  
7 to assist Defendant in accessing his account before asking Defendant to stop  
8 calling his cell phone.

9  
10 17. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his  
11 cellular telephone and/or to receive Defendant's calls using an automatic  
12 telephone dialing system in his conversation with Defendant's representative  
13 on June 9, 2017.

14 18. Defendant continued to place collection calls to Plaintiff.

15  
16 19. Despite Plaintiff's request that Defendant cease placing automated collection  
17 calls, Defendant placed at least Ninety-six (96) automated calls to Plaintiff's  
18 cell phone.

19  
20 **FIRST CAUSE OF ACTION**  
21 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
22 **PROTECTION ACT**  
23 **47 U.S.C. § 227**

24 20. Plaintiff repeats and incorporates by reference into this cause of action the  
25 allegations set forth above at Paragraphs 1-19.

1 21.The foregoing acts and omissions of Defendant constitute numerous and  
2 multiple negligent violations of the TCPA, including but not limited to each  
3 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

4 22.As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,  
5 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and  
6 every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

7 23.Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in  
8 the future.  
9

10  
11 **SECOND CAUSE OF ACTION**  
12 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
13 **CONSUMER PROTECTION ACT**  
14 **47 U.S.C. § 227 et. seq.**

15 24.Plaintiff repeats and incorporates by reference into this cause of action the  
16 allegations set forth above at Paragraphs 1-19.

17 25.The foregoing acts and omissions of Defendant constitute numerous and  
18 multiple knowing and/or willful violations of the TCPA, including but not  
19 limited to each and every one of the above cited provisions of 47 U.S.C. §  
20 227 et seq.  
21

22 26.As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §  
23 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages,  
24  
25

1 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47  
2 U.S.C. § 227(b)(3)(C).

3 27.Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in  
4 the future.

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, JACOB MILLNER, respectfully requests  
8 judgment be entered against Defendant, CAPITAL ONE, for the following:

9  
10 **FIRST CAUSE OF ACTION**

11 28.For statutory damages of \$500.00 multiplied by the number of negligent  
12 violations of the TCPA alleged herein (96); \$48,000.00;

13 29.Actual damages and compensatory damages according to proof at time of  
14 trial;

15  
16 **SECOND CAUSE OF ACTION**

17 30.For statutory damages of \$1,500.00 multiplied by the number of knowing  
18 and/or willful violations of TCPA alleged herein (96); \$144,000.00;

19 31.Actual damages and compensatory damages according to proof at time of  
20 trial;

21  
22 **ON ALL CAUSES OF ACTION**

23 32.Actual damages and compensatory damages according to proof at time of  
24 trial;  
25

1 33.Costs and reasonable attorneys' fees;

2 34.Any other relief that this Honorable Court deems appropriate.

3 **JURY TRIAL DEMAND**

4 Plaintiff demands a jury trial on all issues so triable.

6 RESPECTFULLY SUBMITTED,

7 DATED: March 30, 2018

8  
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